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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1378th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 9 March 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

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GE.00-41013 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fourteenth periodic report of Denmark (CERD/C/362/Add.1; HRI/CORE/1/Add.58) (continued)

At the invitation of the Chairman, the members of the delegation of Denmark resumed their places at the Committee table.

1. Mr. LECHUGA HEVIA said that the State party's report indicated that article 266 (b) of the Danish Criminal Code prohibited the dissemination of racist statements and racist propaganda (para. 135), and that there had been nine convictions for violations of that article since the preparation of the previous report (para. 140). It also stated that that provision must be applied with due consideration for the freedom of expression (para. 136). The racist nature of a statement, whether published or distributed, nevertheless prevailed regardless of the importance the courts attached to freedom of expression in a decision. A violation of article 4 could therefore occur even if the court chose not to convict. He would like clarifications on that matter.

2. With regard to "Radio Oasen", which was utilized by a neo-Nazi association, in his view the State party was committing a double violation of article 4 of the Convention by supporting a station that disseminated racist statements and by not declaring it illegal or banning the organization, an obligation of States parties under article 4 (b).

3. Another violation of that article was the publication, in a weekly publication, of statements insulting Africans and Asians made by the leader of the People's Party. The Public Prosecutor had determined that those statements were of a political, not a racist nature and had not initiated proceedings; the journalist who had denounced the racist nature of those statements had, however, been convicted of slander. Similarly, the insulting statements toward foreigners that had been published by the Progressive Party had been considered too general to merit prosecution. Those examples demonstrated that the authorities and political leaders held attitudes that encouraged racist statements.

4. He would like the delegation to comment on paragraph 195 of the report, which indicated that bank loans were granted to foreigners on condition that they provided certain information. In an effort to combat money-laundering, banks applied the internationally acknowledged principle of "know your customer". That suggested that in Denmark, foreigners were suspected of money-laundering, although the paragraph stated that such information was requested for objective reasons.

5. Mr. PILLAI said he would like to know how the Government reconciled the principle of freedom of expression with racist statements and incitements to violence. The measures described in the report, particularly those undertaken by the Board for Ethnic Equality, consisted

mainly in awareness-raising activities, which in his view was insufficient. Had the Government considered prohibiting the dissemination of racist ideas through the electronic media or the press?

6. Furthermore, he had been informed by non-governmental organizations (NGOs) that public officials had refused to deal with complaints submitted by them on behalf of victims, on the ground that NGOs were not empowered to act on behalf of third parties. He requested the Government to abolish the provision prohibiting NGOs from bringing such proceedings, and thereby from participating in the settlement of disputes of the type that came before the Committee.

7. Mr. BOSSUYT asked whether the word "refugee", as it was used in the report, should be understood in the sense of the Geneva Convention, or could also be taken to mean "asylum-seeker", who had not been recognized as having refugee status. He would also like to know how many legal immigrants and how many clandestine immigrants there were in Denmark. If the second category was larger than the first, that could explain the existence of tensions. Since the reply required statistical information, the Government could communicate that information in its next report.

8. He would like to know the status of international conventions in Danish domestic law, since the delegation had stated that incorporating the Convention into the domestic law would not fundamentally change the legal situation. Did international conventions take precedence over the Constitution and domestic law?

9. Mr. SHAHI, noting with satisfaction that the Committee's conclusions to the thirteenth periodic report had been implemented, remarked that paragraph 63 of the report acknowledged that integration efforts had not been sufficiently efficient. He encouraged the Government to ensure that such efforts reaped greater results.

10. According to paragraphs 108 to 110 of the report, Danish law provided that refugees should be distributed among various municipalities, taking into account their family ties and personal circumstances. The Committee was aware of the case of an older Iraqi woman who was obliged to live in an area far from the home of her only son. He would like to know how that matter stood, and whether there was a higher-level authority in Denmark that could satisfy her request.

11. To his dismay, the sentences handed down in the nine cases of racist propaganda (report, para. 140) were so light as to be merely symbolic. In his view, sanctions should be heavy enough to act as a deterrent. Since insults against immigrants had been spread over the Internet, he would like to know if the Danish Government had taken measures to combat the dissemination of incitement to racial hatred and racist propaganda by that means. It was clear that the Internet fell within the scope of article 4 of the Convention.

12. Ms. JANUARY BARDILL inquired why the Government was reluctant, according to NGOs, to establish mechanisms to register employed persons or persons who came before the courts, a useful source of information in the fight against inequality.

13. Mr. LEHMANN (Denmark), recalling that Mr. Yutzis, the Rapporteur, had cited negative remarks about foreigners made by certain Danish politicians, said that notice should also be taken of positive remarks made by other politicians. Furthermore, care should be taken when using quotations out of context.

14. Immigrants and refugees were the subject of heated debate in Denmark. In a solidly democratic country whose cornerstone was freedom of expression, even upsetting and shocking opinions could be expressed. Other opinions, and not trials and restrictions, should be employed to combat those opinions. Under article 4 of the Convention, it seemed that racist statements were no longer opinions, but rather violations. "Radio Oasen" should be judged on the basis of the ideas it disseminated. The name of the station or the fact that it was used by a neo-Nazi group were not pertinent arguments.

15. He was grateful to Mr. Rechetov for having recalled that the Danes had hidden Jews in October 1943, at the height of the Second World War. The courage they had shown at that time was grounded in the ideas of Kierkegaard, a philosopher whose work had deeply influenced Danish culture, and who believed that the individual must ultimately assume full responsibility for his choices.

16. The Danish concept of the integration of refugees and immigrants was based on the principle that efforts must be made both by foreigners and by Danes. In order to encourage cultural coexistence that was mutually respectful, the Government had adopted innovative measures to assist refugees and immigrants in becoming active members of society on the same footing as Danish nationals.

17. Ms. ANDERSEN (Denmark) noted that the Committee was particularly concerned about the unemployment rate among immigrants and wished to have statistics that would enable it to assess the situation of ethnic minorities in the labour market. The Danish Government was actually in the process of compiling statistics disaggregated by age, sex, ethnic origin, level of education and branch of activity and taking account of geographical distribution. Denmark's next periodic report would contain the preliminary results of the initiative. To improve the situation of ethnic minorities in the labour market, the Government had also decided to set up special units in the public-sector employment service focusing on the placement of persons belonging to such minorities.

18. With regard to indirect discrimination in the form of citizenship and linguistic requirements by employers, the Prohibition of Differential Treatment in the Labour Market Act clearly stipulated that employers were not authorized to demand qualifications over and above those required for a particular position, especially where such requirements unduly penalized certain sectors of the population.

19. Replying to questions about the meaning of paragraphs 7 and 8 of the report (CERD/C/362/Add.1), she said that when an employee, by virtue of his or her ethnic origin, was particularly well qualified for a specific job, derogations from the Prohibition of Differential Treatment in the Labour Market Act were permissible. Many international instruments provided for such derogations.

20. In response to a question by Mr. Yutzis regarding the right to take special measures, she said that article 1, paragraph 4, of the Convention imposed no restrictions in that regard. The idea of affirmative action to offset handicaps suffered by persons of different ethnic origin was in practice still quite controversial. Thus, such action was permissible in Denmark only pursuant to or by reference to existing legislation. The law also permitted the launching of certain public projects on behalf of minorities.

21. Lastly, with regard to the status of women of different ethnic origin, a dialogue had been initiated with immigrant organizations to address, inter alia, problems of violence and the situation of the women concerned in the labour market.

22. Ms. URTH (Denmark) said she would first review the provisions regarding housing in the Integration Act.

23. Under the Act all municipalities shared responsibility for receiving and housing refugees. When a refugee was granted a residence permit, the immigration authorities took account of his or her personal situation, linguistic and cultural background, the possibility of establishing contacts with other refugees with a similar profile, and personal preferences when deciding in which municipality he or she should take up residence. If the refugee had family ties with a person residing in Denmark, that would also be taken into account. Humanitarian considerations thus played a major role in the decision-making process. Clearly, however, not all decisions were perfect; she assured the Committee that the Danish delegation would make inquiries about the case, mentioned by Mr. Sherifis and Mr. Shahi, of the elderly woman of Iraqi origin who had been sent to a different town from her only son and would report its findings.

24. According to a preliminary assessment of the application of the Integration Act, the municipalities managed in most cases to find housing for refugees within the prescribed three-month period, which was a considerable improvement on the previous situation.

25. In response to questions by the Rapporteur, Mr. Yutzis, about family reunification, she said that the adoption of new rules necessitated a number of amendments to the Aliens Act, which were currently before Parliament.

26. However, residence permits could be issued to parents over the age of 60 of a Danish child or a child granted asylum in Denmark. Permits were issued on a case-by-case basis to parents under the age of 60 or to child applicants for immigration.

27. In response to the specific question asked by Mr. Yutzis, she said that an asylum-seeker who married a Danish citizen would not be refused asylum on that ground.

28. For more details regarding family reunification, she referred the members of the Committee to the Aliens Act, a copy of which the delegation was happy to place at their disposal.

29. Lastly, she confirmed that the Integration Act provided for an introduction programme for newly arrived aliens, the content of which had been considerably improved. To evaluate the impact of the Act, the Ministry of the Interior had launched a plan of action in March 1999

providing, inter alia, for the establishment of databases on housing, training, education, employment, social benefits and the general living conditions of aliens. Surveys would shortly be conducted among aliens themselves to ascertain their views. The findings of the evaluation process would be reflected in the next periodic report.

30. Mr. ABOUL-NASR inquired about the meaning of the term "refugee-like persons" (para. 62).

31. Ms. URTH (Denmark) said that they were de facto refugees to whom Denmark granted asylum for humanitarian reasons in accordance with the provisions of the Convention relating to the Status of Refugees.

32. Mr. LINDBLOM (Denmark), replying to questions regarding the interpretation of article 266 (b) of the Danish Penal Code, which gave effect to article 4 of the Convention, said that it was not always easy to strike an acceptable balance between respect for freedom of expression and action against racist propaganda and incitement to racial hatred. In the view of the European Court of Human Rights, the protection of freedom of expression concerned not only proper or inoffensive statements; in a democracy, it should also be possible on occasion to make statements that were offensive or shocking. It was therefore for the criminal courts under Danish law to assess whether "racist statements" had been made as part of the cut and thrust of political debate, for example, or really constituted incitement to racial hatred.

33. At all events, article 266 (b) prohibited racist insults, racist statements made in public and threats against individuals on account of their membership of a particular ethnic or racial group. The motive for the offence was taken into account and could constitute an aggravating circumstance entailing a heavier sentence.

34. Racially motivated acts of violence were, of course, also punishable but they came under different provisions of the Code.

35. The possibility of authorizing victims of acts of racial discrimination to sue for damages in civil proceedings alongside the criminal proceedings had been considered when article 266 (b) was amended in 1995 to incorporate new provisions addressing racist propaganda. But the Ministry of Justice had eventually decided against the proposal by the Parliament's Legal Affairs Committee, citing the "principle of objectivity": it was felt that, given the serious consequences that might ensue from such proceedings for an innocent party, it was preferable to restrict to the Office of the Public Prosecutor the possibility of instituting proceedings once it was convinced, in the light of an objective assessment of the facts, that a conviction was likely. Ultimate responsibility for protecting the public against racism therefore lay with the public prosecutors, and Parliament was not for the time being contemplating the possibility of permitting civil proceedings.

36. Ms. CLAUSON (Denmark) said that, since the submission of the fourth periodic report in January 1999, the Danish courts had handed down three judgements in respect of breaches of article 266 (b) of the Penal Code, including one for defamation of religious and/or ethnic groups on the Internet. Several other cases were pending.

37. She took issue with the claim by a member of the Committee at the preceding meeting that racist statements did not constitute a breach of article 266 (b) if they were made calmly and politely. That was not correct: in the case in question, the offender had been convicted but the court had concluded that the degree of humiliation inflicted did not warrant the payment of compensation to the victim.

38. Ms. TOFTEGAARD (Denmark), replying to the question raised at the previous meeting on the current status of the Convention in Danish law, said that the Convention was a valid legal source in Denmark and was applicable before Danish courts and administrative bodies. According to the "rule of interpretation", domestic law must be interpreted, as far as possible, in a way that was compatible with Denmark's international obligations. Furthermore, it was "assumed" that any decision taken by Parliament would not undermine Denmark's obligations under international law. It was, therefore, incumbent upon administrative bodies and the courts to take due account of human rights provisions in positive international law when interpreting domestic law.

39. In response to Mr. Rechetov's question as to why first instance courts in Greenland were always presided over by lay judges, she said that that was almost a necessity because the highly dispersed population was accustomed to discharging justice itself. There was much to be said in favour of that traditional system of justice which emphasized post-punishment rehabilitation. However, all decisions handed down by the local courts could be appealed before the High Court in Nuuk, which was presided over by non-jurists and professional judges.

40. Mr. LINDBLOM (Denmark), supplementing the information given on the administration of justice in Greenland, said that judicial traditions in Greenland were highly influenced by Inuit philosophy, which was based on the harmonious interaction between body and mind and between the human being and his environment. First instance courts were the cornerstone of the judicial system of Greenland and the Greenland Law Reform Commission, which was due to complete its work in February 2001, had laid special emphasis on the development of human resources and the training of its indigenous staff. The Greenland Home Rule Authority had, furthermore, exerted pressure on the Danish Government to take immediate steps to that effect. In addition, several training programmes incorporating the needs and expectations of the indigenous population had been launched over the last few years.

41. The Government should be able to provide additional information on the delegation of authority to the Greenland Home Rule Authority with respect to the administration of justice when the next periodic report was submitted in two years' time.

42. Mr. LEHMANN (Denmark) said that a translation of the Convention into Greenlandic was being prepared and would be completed soon. He thanked the Committee members for their attention and said the detailed answers to the questions posed would certainly appear in his country's next periodic report.

43. Mr. de GOUTTES said that the issue of combating racist propaganda on the Internet was a very sensitive one which raised a large number of legal and technical questions. How did one

decide who was responsible; was it the service provider, the server administrator or the author of the site in question? He would welcome information on the matter with regard to the previously mentioned case.

44. Mr. VALENCIA RODRIGUEZ, raising the issue of remedies for victims of racial discrimination and referring to paragraphs 253 and 254 of the report (CERD/C/362/Add.1), wondered what prevented victims from lodging complaints themselves with the competent courts in order for the necessary investigation and trial to be conducted. He would also welcome more detailed information on the legal mechanisms for compensating victims.

45. Mr. YUTZIS (Country Rapporteur) welcomed the delegation's cooperation in the consideration of the report. Responding to Mr. Lehmann's remarks that both Danes and foreigners needed to make an effort, he drew attention to the unwillingness of the Danish authorities to introduce measures necessary for the integration of immigrants, refugees and asylum-seekers, and the absence, in particular, of measures to ensure equal opportunities for the less fortunate, such as affirmative action measures. He also expressed concern at the number of reports indicating or denouncing acts of violence committed against ethnic minorities, immigrants and refugees in Denmark and in the Nordic countries. The perpetrators of those crimes were said to have ties with neo-Nazi and extremist groups, seemingly confirming the resurgence of Nazi ideology in the Nordic countries.

46. Furthermore, it was not clear how nationals and non-nationals were differentiated. What criteria were used to decide the category to which a person belonged? The question was relevant to the implementation of article 5 (i) (e) of the Convention relating to the enjoyment of economic, social and cultural rights, and in particular, the right to work. What was the situation of a non-national who was issued a work permit?

47. As to remedies available to victims of racial discrimination, the State party was invited to provide supplementary information on appellate bodies, if they existed, and appropriate defence mechanisms.

48. Attention should also be drawn to a decline in social welfare, which could only be viewed negatively by the immigrant community.

49. It was important for Denmark to probe the underlying causes of the resurgence of acts of racial discrimination and not simply to solve the problems on a case-by-case basis, because when symptoms recurred, they had to be nipped in the bud. In that connection, he was not satisfied with the delegation's response to the cases of racist demonstrations mentioned in the course of the discussion.

50. The Committee must remain vigilant and not allow certain rights to be violated in the name of freedom.

51. He had the impression that Denmark did not realize the cultural riches that foreigners could bring to the country.

52. Ms. CLAUSON (Denmark), responding to Mr. de Gouttes' remarks about racist propaganda on the Internet, said that in the case mentioned earlier, the author of the site had been sentenced, under criminal law, and fined DKr 2,000. Furthermore, the police and the Office of the Director of Public Prosecutions reserved the full right to investigate and try cases, including violations falling under article 266 (b) of the Penal Code.

53. Mr. LEHMANN (Denmark) thanked the Committee for the instructive exchange of views and said that the next report would contain the answers to the outstanding questions.

54. The CHAIRMAN said he was pleased with the constructive dialogue that had taken place between the Danish delegation and the Committee and praised the efforts of the State party to implement the provisions of the Convention and its strict observance of the deadlines for submitting reports. Thus, the Committee had concluded its consideration of the fourteenth periodic report of Denmark.

55. The delegation of Denmark withdrew.

The meeting was suspended at 12.15 p.m. and resumed at 12.25 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Situation regarding the draft amendment to the Committee's rules of procedure

56. Mr. ABOUL-NASR said he would like to know if the Committee was in favour of examining the proposed amendment of the rules of procedure whereby a Committee member would not be allowed to participate in the consideration of a periodic report when he was a national of the country concerned.

57. Mr. BANTON said he felt able to give a negative reply to Mr. Aboul-Nasr's question, knowing that the author of the proposed amendment referred to had ceased to be a Committee member two years previously.

Consideration of draft general recommendations (CERD/C/56/Misc.11 and Misc.13) (documents circulated during the meeting in English only)

58. The CHAIRMAN recalled that at a previous meeting the Committee had decided to discuss three draft general recommendations during its fifty-sixth session in the order in which they had originally been submitted. The first, put forward by Mrs. McDougall, concerned forms of gender-related racial discrimination and the other two, submitted by Mr. Banton, were entitled "The lesser forms of racial discrimination" (CERD/C/56/Misc.11) and "Remedies for victims of racial discrimination" (CERD/C/56/Misc.13).

59. In the absence of Mrs. McDougall, he invited Mr. Banton to present his two proposals to Committee members for an initial exchange of views, on the understanding that in due course the Committee would consider the three texts for adoption in chronological order as planned.

60. Mr. BANTON said the aim of the draft general recommendation contained in document CERD/C/56/Misc.11 was to make it easier for the Committee to respond to delegations of States parties which maintained, as the Dominican Republic and Haiti had done at its fifty-fifth session, that as racial discrimination did not exist in their countries there was no need for any legislation to counter it. In such a case, the Committee could simply invite the member States in question to refer to the proposed general recommendation.

61. The aim of the text contained in document CERD/C/56/Misc.13 was to provide clarifications for States parties that were over-inclined to use exclusively penal sanctions against the authors of breaches of the Convention. Although the application of penal measures by Member States was appropriate for violations covered by article 4 of the Convention, it seemed neither suitable nor effective for violations of the rights listed in article 5 of the Convention, particularly the right to work, to housing and to education. The desired objective was to encourage States that did not do so sufficiently to apply administrative, regulatory or other available measures in tackling violations of rights such as those covered by article 5 (f) of the Convention, for example when members of minority groups were refused service or entry at establishments intended for use by the public, such as bars or discotheques. The sanctions might include the withdrawal of licences, authorizations or other permits granted by the administrative authorities.

62. Mr. ABOUL-NASR said that the proposals made in document CERD/C/56/Misc.11, if expanded and adapted, might facilitate the handling of other delicate and difficult situations with which the Committee was confronted, such as when the delegations of certain member States cited national Islamic traditions in attempting to substantiate the idea that an act prohibited by the Convention did not constitute an offence in their countries.

63. The draft text contained in document CERD/C/56/Misc.13 (Remedies for victims of racial discrimination) was very interesting, but at first sight raised some particularly delicate issues. He thought it would be unfair to tackle the question of compensation for victims without including categories of people who had suffered particular harm through acts of racial discrimination and who also deserved compensation, particularly victims of slavery and indigenous populations that had been subjected to genocide.

64. Mr. SHAHI said that the distinction made in document CERD/C/56/Misc.13 between penal sanctions that could be taken by member States against the authors of acts of racial discrimination covered by article 4 of the Convention and civil sanctions taken against infringements of the rights listed in article 5 was a particularly useful one. Two possible solutions were worthy of further consideration: to call on member States either to make provision for penal sanctions against the authors of violations of article 5, or to confine punishment under penal law to those who violated article 4 and punishment under civil law to those who violated article 5.

65. He suggested that the Committee examine the situation in order to determine whether infringements of the rights protected under article 5 should be the subject of civil procedures alone, given the fact that the latter appeared to offer victims more effective means of recourse than criminal procedures.

66. Mr. VALENCIA RODRIGUEZ said he found the draft general recommendation on lesser forms of racial discrimination interesting. However, he pointed out that the final text would have to take account of the differences in penal legislation between countries that used Anglo-Saxon law and countries such as his own.

67. He noted that the proposals contained in the text on remedies for victims of racial discrimination were based mainly on article 4 of the Convention, which called for penal sanctions to be taken against persons who promoted the dissemination of racist ideas or assisted racist organizations. It would certainly be useful to draw States parties' attention to article 6 of the Convention, which provided for intervention by administrative arbitration or conciliation committees as a means of resolving problems relating to racial discrimination. Naturally, the ideal would be to achieve the best possible continuation of the possibilities offered by the articles mentioned in the draft.

68. Mr. de GOUTTES, referring to document CERD/C/56/Misc.11, said he was not sure that the expression "lesser forms" of racial discrimination was appropriate, for it implied that more or less serious levels of racial discrimination existed. It might be better to use the expressions "hidden" or "disguised" discrimination, or even to speak of indirect racial discrimination, meaning acts having discriminatory effects. On the whole, he felt that the draft general recommendation had potential, but required further refinement.

69. With regard to document CERD/C/56/Misc.13, he associated himself with the comments made by Mr. Shahi. He emphasized the need to take account of the differences that existed between the legal systems of States parties. It was perhaps unfair to criticize some of them for using penal sanctions more than civil or administrative sanctions, given the fact that article 4 (a) of the Convention required States to take penal action against persons who had committed certain acts of racial discrimination, while on the other hand the legal system in certain States allowed victims to seek compensation in the criminal courts through civil action based on association with the public prosecutor. Moreover, the law in the States concerned allowed victims to make a submission to labour tribunals, administrative courts or courts of social law. In short, account must be taken of the specific procedures in different countries.

70. Mr. DIACONU said that the proposals made by Mr. Banton were acceptable on the whole, provided that further work was done on certain points.

71. With regard to document CERD/C/56/Misc.13, he endorsed the comments of Mr. de Gouttes concerning the need to take into account different countries' legal systems.

72. As to document CERD/C/56/Misc.11, the criteria to be applied varied somewhat, depending on whether the authors of the racial discrimination were individuals or States. He too felt it was important not to refer to lesser forms of discrimination, in order to avoid suggesting that certain States committed serious forms of racial discrimination while others did not. Likewise, efforts must be made to avoid different criteria of seriousness for acts of racial discrimination committed either by an individual or by a State. That meant that strict criteria must be adopted. It might be better to gear the general recommendation to acts of racial discrimination committed by individuals.

73. Mr. BOSSUYT agreed that the expression "lesser forms of racial discrimination" was not appropriate. He suggested replacing it by "forms of racial discrimination practised by individuals". Also, in order not to place undue emphasis on non-nationals at the end of paragraph 1, he proposed replacing the expression "who are not nationals of the State" by "whether they are nationals or not".

74. He also asked for clarification as to the meaning of paragraph 2, as it was difficult to see how it would be possible to attribute significance to group characteristics in a monolithic society.

75. The CHAIRMAN said that the Committee had completed the initial exchange of views on the draft general recommendations submitted by Mr. Banton, as contained in documents CERD/C/56/Misc.11 and Misc.13.

The meeting rose at 1 p.m.